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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,307	09/15/2003	Michael J. Roche	80107.078US1	1799

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EXAMINER

MERCADO, JULIAN A

ART UNIT	PAPER NUMBER
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1745

MAIL DATE	DELIVERY MODE
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09/10/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/662,307	Applicant(s) ROCKE ET AL.	
	Examiner Julian Mercado	Art Unit 1745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5,6,9-11,14,18-20,22,23 and 27-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5,6,9-11,14,18-20,22,23 and 27-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>2007-06-21</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 21, 2007 has been entered.

Claim Rejections - 35 USC § 112

The rejection of claims 15, 18 and 19 under 35 U.S.C. 112, first paragraph, is deemed moot in view of the cancellation of claim 15 (from which claims 18 and 19 depend).

Claim Rejections - 35 USC § 112

The rejection of claims 14, 15, 18, 19 and 27-29 under 35 U.S.C. 112, second paragraph has been withdrawn.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 18 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claims 18 and 19 depend from claim 15, which has been cancelled. Thus, the scope of claims 18 and 19 are indefinite.

Claim Rejections - 35 USC § 102 and 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 5, 6 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Keskula et al. (U.S. Pat. 6,406,806 B1).

Claims 9, 10, 11 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keskula et al.

The rejection is maintained for the reasons of record. The examiner notes the amendment to the present claims now reciting that the controller is operatively coupled so as to select one of the fuel cell or the battery as a power source. As discussed in the prior Office action, Keskula et al. is maintained to teach providing power from the *battery* only, insofar as in a rapid stop or shutdown condition, "the load on the [fuel cell] stack is removed", or in the "limp home" scenario described in col. 11 lines 43-48. See also col. 9 lines 39-52 and col. 11 line 9 et seq. Accordingly, it is asserted that in Keskula et al. the providing power step is derived from the battery.

Claim 20 is rejected under 35 U.S.C. 102(e) as being anticipated by Colborn et al. (U.S. Pat. 6,787,259 B2).

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Colborn et al.

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The rejection is maintained for the reasons of record which is herein incorporated by reference. Focusing on the present amendment and applicant's salient arguments, the examiner notes the amendment to the present claims now reciting that the power multiplexer provide[s] power from the battery. In Colborn et al., "[a]t time T0, the initial power fails at the site and batteries begin backing up the whole load..." whereby "line 302 indicates that the battery bank is providing support to the entire load and the fuel cell controller is sensing a drop off in voltage on the DC bus." See col. 7 line 29 et seq.

Claims 23 and 27-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Gore (U.S. Pat. 6,855,443 B2)

As discussed in a prior Office action, Gore teaches an electronic system comprising a removable fuel cell [222] a secondary power source such as a battery (specifically disclosed as not shown) a controller [212] and a load device that includes an antenna [214]. See col. 6 line 39 et seq. It is asserted that the electronic system, being a digital device such as a laptop, includes a computer.

As to the controller to multiplex the fuel cell and secondary power source, Gore specifically discloses that the battery provides "power to the initial transfer of fuel to the electrochemical cell." (ib.) which is considered effected by the aforementioned controller [212]. Accordingly, it is asserted that the power multiplexer selects one of the fuel cell or the battery as the power source.

Response to Arguments

Applicant's arguments filed with the present amendment have been fully considered but they are not persuasive. It is asserted that the power multiplexers taught or at least suggested by the prior art provide power from one of the fuel cell or battery at a time, insofar as either of the fuel cell or battery is specifically selected for operation thereby.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian Mercado whose telephone number is (571) 272-1289. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan, can be reached on (571) 272-1292. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



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PATRICK JOSEPH RYAN
SUPERVISOR, PATENT EXAMINER